



# **San Diego City Attorney MICHAEL J. AGUIRRE**

## **NEWS RELEASE**

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### **MAYOR'S PLAN TO TRANSFER THE CITY'S FAMILY JUSTICE CENTER LACKS TRANSPARENCY**

**San Diego, CA**—Transparency in government was blatantly lacking regarding a proposal to transfer the City of San Diego's Family Justice Center Department (SDFJC) to the YWCA of San Diego County. It is a plan that was approved via a May 1 memorandum by Mayor Jerry Sanders to the City Council and pushed by former City Attorney Casey Gwinn without any knowledge or discussion from one of the key co-founding partners—the San Diego City Attorney's Office.

"If the Mayor and Mr. Gwinn, who is now the YWCA's executive director, were genuinely interested in good government, they would have insisted the proposal go through the proper public process, instead of politicizing this issue," said City Attorney Michael Aguirre. "In addition, the City's 2004 ordinance creating the SDFJC requires the City Attorney be consulted regarding matters dealing with the FJC."

The SDFJC has five employees who oversee the administration/management of the Department which is located at 707 Broadway in downtown San Diego. The Center opened its doors on October 10, 2002, and is a "one stop shop" for victims of domestic violence and their children. Victims can meet with law enforcement officials to report abuse and receive a variety of social services. Having both the entire domestic violence units of a police department and a prosecutor's office under one roof is what makes the SDFJC unique from all other social providers in the nation who assist victims of domestic violence.

However, in a March 27, 2008 letter to the Mayor, which references support from District Attorney Bonnie Dumanis, the YWCA proposes to eliminate this primary innovation in the first phase of the two-part plan. It would provide for, at most, woefully inadequate space for domestic violence prosecutors. According to the YWCA's proposal, it "does not anticipate a large presence from the City Attorney's Office" but it will accommodate the domestic violence unit of the San Diego Police Department. Thus, the alleged purpose of maintaining the integrated provision of services would be lost.

According to Assistant City Attorney Margaret Jacobo, immediately upon finding out about the YWCA's proposal, she met on May 2nd with Mr. Gwinn who informed her about the Mayor's May 1<sup>st</sup> memo to the City Council. The memo did not copy the City Attorney's Office.

"Mr. Gwinn offered to include the San Diego City Attorney's Domestic Violence and Special Victim's  
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Unit in the YWCA plan, as long as City Attorney Aguirre supported his proposal,” said Assistant City Attorney Jacobo.

The matter was set to be heard today before the Budget and Finance Committee of San Diego City Council. However, the City Attorney’s Office informed the Committee that they were in violation of the Brown Act because the notice for the SDFJC did not address the issue of transferring the department to the YWCA. Chairwoman Toni Atkins adhered to the City Attorney’s legal opinion.

In a report released today to the Mayor and City Council, regarding the proposal to transfer the San Diego Family Justice Center to the YWCA, the City Attorney cited numerous issues such as procurement, labor laws governing meet and confer obligations, City Charter provisions governing managed competition, and the Establishment Clauses of the Federal and State Constitutions that would need to be addressed before any further discussion of the future of the SDFJC.

- The Mayor has authority to outsource the services of City Departments to private contractors pursuant to Charter section 117(c) and its implementing ordinances. However this is the *exclusive* method for such outsourcing of City services. To the extent this proposal involves the outsourcing of city services to a non profit corporation it does not seem to comply with the requirements of section 117(c). Accordingly, incorporating this budgetary suggestion into the appropriations ordinance would make the ordinance conflict with Charter section 117(c). Such an ordinance or agreement that conflicts with a City Charter provision would be void. *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 171 (1994); *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 387-388 (1976).
- The City can not contract out the work of the MEA bargaining unit members in the SDFJC or eliminate their positions, without first negotiating with MEA. *Building Material and Construction Teamsters Union, Local 216 v. Farrell, as Controller* (1986) 41 Cal.3d. 651. The negotiations must involve both the decision to contract out work, and the impact of the decision on any affected bargaining unit employees.
- The proposal also raises significant legal questions regarding the method by which the contractual relationship between the City and the YWCA has been negotiated. Contracts for City services must be procured through a competitive process governed by Chapter 2, Article 2, Division 32 of the San Diego Municipal Code. Under the provisions of Division 32 and related sections of the Municipal Code, services must be procured on a competitive basis unless an exception to this requirement applies.
- SDFJC would still be a City Department but not run by City employees. While the City Attorney’s Office and the San Diego Police Department were the main committed partners in launching and operating the SDFJC, it is the City that is the legal entity behind all actions of the SDFJC. The City, for example, funded the original site lease; signed the extended five year lease; signed all contractors for construction, parking, and utilities; applied for and received grants; and signed partnership agreements with more than twenty community partner agencies to provide victim

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services on site. An analysis is necessary to determine how the YWCA's proposal affects the City's liability.

In 2005, the City of San Diego hired Kroll Inc., to review earlier investigative findings into the San Diego's pension debacle and financial disclosure practices. It is important to note that Casey Gwinn was found to be negligent in the fulfillment of his duties as the City Attorney with regard to financial disclosures. (See, Kroll Report, p. 238. <http://www.sandiego.gov/>) The Kroll Report also questioned Mr. Gwinn's billing practices as City Attorney. The conclusions of the Kroll Report calls into question of the wisdom of turning over a City department, once again, to Mr. Gwinn

The City Attorney's report on the transfer of the San Diego Family Justice Center to the YWCA concludes with the following recommendations:

**Mayor and City Council take the time to review these issues to allow time for public participation in the process before moving forward. If there is a problem with the leadership of a City department, the solution is for the Mayor to find another department director. The solution most certainly is not for the City to absolve itself from leading the department and to outsource the leadership of that Department to a non-profit, faith-based organization.**

**If the Mayor and his management team are unable to carry out the mission of the nationally recognized San Diego Family Justice Center, then the solution is to return the leadership of the SDFJC to its origins – where it was thriving – under the leadership of the City Attorney's Office.**

To view the May 6, 2008, City Attorney Report to the Mayor and City Council regarding the proposal to transfer the San Diego Family Justice Center to the YWCA, visit [www.sandiegocityattorney.org](http://www.sandiegocityattorney.org), click "Significant Reports and Legal Documents."

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